

DOCKET NO. DIXI01-00011
Customer No. 23990

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: PAUL HAYWARD KELLY ET AL.
Serial No.: 10/678,155
Filed: October 6, 2003
For: INTEGRATED COLUMN WALL FOR A VENDING MACHINE
Group No.: 3651
Examiner: Rakesh Kumar
Confirmation No.: 5740

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF UNDER 37 C.F.R. § 41.41

This Appellants' Reply Brief under 37 C.F.R. § 41.41 ("Reply Brief") is filed in response to the Examiner's Answer that was mailed in this Appeal on November 26, 2008. This Reply Brief is being timely filed on January 26, 2009.

ARGUMENTS IN RESPONSE TO THE EXAMINER'S ANSWER

This Reply Brief incorporates all prior arguments set forth in the Appellant's Appeal Brief filed on July 3, 2008, including all arguments for claims not specifically addressed below.

Claims 1-9, 14-17 and 28

The Examiner's Answer stated that the *Wittern* reference discloses a "hole" in the form of element 38 in Figure 1 that supposedly performs the function of a decoupling member. (Examiner's Answer, Page 5, Lines 12-20). Figure 3 of the *Wittern* reference discloses that one end of the element 38 extends to the right hand edge of the vertical sidewall 20A. The Examiner's Answer states that all loadings above a hole must be supported by the material at the longitudinal edges of the hole in the panel. (Examiner's Answer, Page 5, Lines 7-8). There is no material at the longitudinal edge at the right hand side of the element 38 to provide support.

The Examiner's Answer assumes that the type of holes that are shown in the *Wittern* reference are equivalent to decoupling members of the type disclosed and claimed by the Appellants. The Examiner is making an inherency argument that the *Wittern* holes are inherently equivalent to the Appellants' decoupling members for isolating stresses in a column wall. The Appellant's respectfully submit that the Examiner has not provided a basis in fact and/or technical reasoning that the allegedly inherent characteristic necessarily flows from the teaching of the prior art. For example, there is no description of how the "hole" of element 38 isolates stresses in the column wall 20A. Any loading stress in the column wall 20A

would be carried by an attached receiver member 42 or the attached pivot member 58 or the attached back wall 26.

The Examiner's Answer stated that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of *Wittern* to include stiffening elements as taught by *Thompson* disposed next to the slot members of *Wittern* to provide rigidity to the sheet panels. (Examiner's Answer, Page 6, Lines 11-14). The Appellants respectfully traverse this assertion. There is nothing in either the *Wittern* reference or the *Thompson* reference that suggests combining the teaching of these two references. That concept comes from the Appellants' patent disclosure.

The Examiner's Answer suggested that the definition of the word "integrally" as defined in Webster's dictionary means that the deflection plate 70 of the *Percy* reference is an integrally formed alignment member. The Appellants respectfully disagree with the Examiner's interpretation of the dictionary definition of the word "integrally." The definition requires that an integral part be "formed as a unit with another part." (Emphasis added). The deflection plate 70 of the *Percy* reference is a part that is separate from the wall 44. Therefore, the deflection plate 70 is not "formed as a unit" with the wall 44. The wall 44 and the deflection plate 70 are connected as separate elements

Claims 10 and 33

The Examiner's Answer suggested that because the deflection plate member 70 of *Percy* is formed from "a material sheet" the deflection plate member 70 is equivalent to an integrally formed alignment member that is stamped from "the material sheet" of the Appellants' invention. (Examiner's Answer, Page 7, Lines 3-5). The Appellants respectfully traverse this suggestion. The deflection plate member 70 of the *Percy* reference is a piece of material that is separate from (and not integral) with the "material sheet" as claimed by the Appellants.

Claims 11-13, 18-23, 24-27 and 29-32

The Examiner's Answer suggested that the stamped bead depression of the *Thompson* reference can be said to be "a narrow slot." (Examiner's Answer, Page 7, Lines 10-14). The Appellants respectfully traverse this assertion in view of the Appellants' definition of the term "slot." It is clear from the Appellants' disclosure that the term "slot" as used by the Appellants refers to "an aperture" that extends through a panel. It is clear that the Appellants are using the term "slot" in the claims to refer to an aperture and not to refer to a groove or depression that does not extend through a panel. Therefore, the *Thompson* reference does not disclose a "slot" as that term is used by the Appellants.

SUMMARY

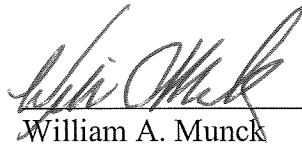
The Appellant has demonstrated that the present invention as claimed is clearly distinguishable over the prior art cited of record. Therefore, the Appellant respectfully requests the Board of Patent Appeals and Interferences to reverse the remaining final rejections of the Examiner and instruct the Examiner to issue a notice of allowance of all claims.

The Commissioner is hereby authorized to charge any fees (including any extension of time fees) or credit any overpayments to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK CARTER, P.C.

Date: Jan. 26, 2009



William A. Munck
Registration No. 39,308

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: wmunck@munckcarter.com